Supreme Court, U.S.
FILED
MAY 15 1992
OFFICE OF THE

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No. 91-1714

In The

Supreme Court of the United States

October Term, 1991

CAROLYN FINDLEY PRICE,

Petitioner,

vs.

DON CARPENTER, ET AL.,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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DUE DATE: MAY 25, 1992

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QUESTION PRESENTED

Whether the lower federal courts have any jurisdiction to review the determination of a local governmental agency that a state statute created no constitutionally protected property interest in Petitioner?

LIST OF PARTIES

PETITIONER:

Carolyn Findley Price

RESPONDENTS:

Don Carpenter, Sheriff of Tarrant County, Texas, and George M. Campbell, Chief Deputy, Tarrant Sheriff's Department

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TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

Respondents Don Carpenter, Sheriff of Tarrant County, and George M. Campbell, Chief Deputy, Tarrant County Sheriff's Department, respectfully request that the Court deny the Petition for Writ of Certiorari, which seeks to review the decision of the United States Court of Appeals for the Fifth Circuit in No. 91-1553, Carolyn Findley Price v. Don Carpenter, Tarrant County Sheriff, et al., affirming the District Court. This opinion is not reported. However, the Memorandum Opinion and Order

of the District Court is reported in *Price v. Carpenter*, 758 F.Supp. 403, 406 (N.D. Tex. 1991).

JURISDICTION

Respondents do not challenge the statutory provision on which Petitioners rely for jurisdiction, nor is the timeliness of the petition questioned.

STATEMENT OF THE CASE

By pro se complaint Petitioner, a licensed attorney, brought suit under 42 U.S.C. §1983 against the Sheriff and Chief Deputy of Tarrant County, Texas, alleging deprivation of her "property right" to write bail bonds without due process of law guaranteed under the 14th Amendment by Respondents Carpenter and Campbell.

The District Court granted Respondents' Motion to Dismiss or for Summary Judgment, and Petitioner appealed to the United States Court of Appeals for the Fifth Circuit.

The Court of Appeals affirmed the judgment of the District Court.

Petitioner, a licensed attorney, during July and until August 8, 1990, had been obtaining the release of prisoners from the Tarrant County Jail by writing bail bonds for them. However, on August 8, 1990, she was advised by letter from Chief Deputy Campbell that her bonds would no longer be accepted as to prisoners whom she did not represent in their pending criminal cases because

she did not qualify for the exemption provided in Sec. 3, Article 2372p-3, V.T.C.S., because she was not representing them in their criminal cases. Petitioner demanded that the Sheriff's Department "rescind" its action until "due process" requirements had been satisfied. Respondents construed Petitioner's letter as a request for a hearing and scheduled a hearing. It was stipulated at the hearing as follows:

> 1. "Carolyn Findley Price is a duly licensed Texas attorney in good standing . . . ";
>
> 2. "[D]uring July and August 1990 Carolyn Findley Price executed bonds for approximately 25 persons incarcerated . . . on pending criminal charges."
>
> 3. "Carolyn Findley Price has not provided legal representation on the merits of the criminal case for any of the persons stipulated in No. 2 above."
>
> 4. "[T]he bond form used by the Tarrant County Sheriff contains a statement which the attorney of record signed when executing the bond. Carolyn Findley Price has not signed that statement on any of those bonds."
>
> 5. Carolyn Findley Price is "not a licensed bail bondsman."

Following the hearing Petitioner was advised by letter by Chief Deputy Campbell that after "due consideration," it was his conclusion that the Sheriff was not required to accept bonds tendered by attorneys who did not represent the persons in their criminal cases unless they had a bail bond license.

REASONS FOR DENYING THE WRIT

A. NO CONFLICT WITH EXISTING AUTHORITY

Although Petitioner claims that the Court of Appeals decision conflicts with established precedent of the Court as held in *Memphis Light, Gas & Water Division v. Craft*, 436 U.S. 1, 19 (1978), this precedent has no application to the instant cause because unlike the plaintiff in *Memphis* Petitioner herein has no legitimate claim of any entitlement created under existing state law. Petitioner herein concedes that in order to be entitled to protection under the due process clause of the 14th Amendment a "property interest" must be created under state law, citing *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982). In order to invoke the protection of the due process clause, Petitioner must first show a state created entitlement, which, as found by the Court of Appeals in this cause, she has wholly failed to do. Hence, there is no conflict with *Memphis* or the other authorities cited by Petitioner.

B. NO JURISDICTION

Although Petitioner contended that as a licensed attorney she was entitled to exemption under Sec. 3 of Article 2372p-3, V.T.C.S., the Texas Bail Bond Act, Respondents administratively determined she was not entitled to this exemption because she did not, in fact, represent the arrested persons for whom she was attempting to write bail bonds, and refused to accept further bail bonds from her. After a hearing requested by her, Respondent Campbell reaffirmed his ruling and Petitioner sued under 42 U.S.C. §1983 claiming that she was thereby being denied due process because the Sheriff's

Department did not accord her any hearing prior to deciding to refuse to accept any further bonds from her. Petitioner has completely refused to avail herself of any of the available state law avenues of review of this administrative determination.

Instead this whole case, including the instant Petition for a Writ of Certiorari, is simply an attempt by Petitioner to obtain federal judicial review of Respondents' administrative decision that she was not within the state law statutory exemption. The Court of Appeals correctly determined that neither it nor the District Court had jurisdiction to sit as a "super review board" to pass upon the correctness of a decision on the merits by a state or local administrative body. *Bishop v. Wood,* 426 U.S. 341 (1976). The issue of whether the Respondents correctly decided the merits of the matter in interpreting and applying the applicable state law was not before either the Court of Appeals or the District Court, and was, in fact, irrelevant. Petitioner had then, and still has, ample state law remedies to correct any misapplication of the state law by Respondents.

CONCLUSION

No significant constitutional issue of national import is presented by this Petition for Writ of Certiorari, and it should be denied.

Respectfully submitted,

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